

Regular Session, 2013

HOUSE BILL NO. 433

BY REPRESENTATIVE BADON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/OBLIGATIONS: Provides relative to surrogacy contracts

1 AN ACT

2 To amend and reenact R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), to enact Chapter 1-C of
3 Code Title IV of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,
4 to be comprised of R.S. 9:2718 through 2720.15, and to repeal R.S. 9:2713, relative
5 to surrogacy contracts; to prohibit genetic surrogacy contracts; to provide for the
6 enforceability of gestational surrogacy contracts; to provide for definitions; to
7 provide for the parties to a gestational surrogacy contract; to provide for contractual
8 requirements; to provide for a proceeding to approve a gestational surrogacy
9 contract; to provide for certain records checks of the parties; to provide for a
10 pre-implantation order; to provide for matters relative to multiple attempts at in utero
11 implantation; to provide for confidentiality of the proceedings; to provide for
12 continuing and exclusive jurisdiction relative to the proceedings; to provide for the
13 termination of a gestational surrogacy contract by notice; to provide for remedies for
14 the failure to perform under a gestational surrogacy contract; to provide for the
15 termination of a gestational surrogacy contract and for the effects of divorce, nullity,
16 and death on a gestational surrogacy contract; to provide for the effect of a
17 subsequent marriage of the gestational surrogate on a gestational surrogacy contract;
18 to provide for a post-birth order; to provide for DNA testing in certain
19 circumstances; to provide for time limitations and finality; to provide relative to birth
20 certificates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1-C of Code Title IV of Code Book III of Title 9 of the Louisiana Revised Statutes, comprised of R.S. 9:2718 through 2720.15, is hereby enacted to read as follows:

CHAPTER 1-C SURROGACY CONTRACTS

PART I. DEFINITIONS

§2718. Definition of terms

As used in this Chapter, the following terms shall have the meanings ascribed to them unless otherwise provided for or unless the context otherwise indicates:

(1) "Gamete" means either a sperm or an egg.

(2) "Genetic surrogacy" means the process by which a woman attempts to carry and give birth to a child using her own gametes and either the gametes of a person who intends to parent the child or donor gametes, when there is an agreement to relinquish the custody of and all rights and obligations to the child.

(3) "Gestational surrogacy" means the process by which a woman attempts to carry and give birth to a child by means of in vitro fertilization using the gametes of the intended parents and to which the gestational surrogate has made no genetic contribution.

(4) "Gestational surrogate" means a woman who agrees to engage in a gestational surrogacy.

(5) "In utero implantation" means the medical procedure whereby the genetic mother's egg is fertilized with the sperm of the genetic father, with the resulting embryo implanted in the uterus of the gestational surrogate.

(6) "Intended parents" means married persons who contribute their gametes to be used in assisted reproduction, and who enter into an enforceable gestational surrogacy contract, as defined in this Chapter, with a gestational surrogate pursuant to which they will be recognized as the legal parents of the child resulting from that assisted reproduction.

1 PART II. GENETIC SURROGACY

2 §2719. Contract for genetic surrogacy; nullity

3 A contract for genetic surrogacy shall be absolutely null.

4 Comments - 2013

5 (a) This Section continues the longstanding disapproval of contracts for
6 genetic surrogacy, which began in 1987 in the wake of the controversial "Baby M"
7 case. See *In re Baby M*, 537 A.2d 1227 (N.J. 1988). A surrogacy arrangement that
8 would allow a mother to agree to relinquish her biological child in advance of its
9 birth violates the public policy of this state and is, therefore, unenforceable, whether
10 the contract is gratuitous or onerous.

11 (b) If individuals choose to ignore the provisions of this Chapter and engage
12 in prohibited forms of surrogacy, this Chapter provides them no legal protection.
13 Parentage, custody, and other questions will be determined in accordance with the
14 general provisions of Louisiana law. See, e.g., C.C. Art. 184.

15 PART III. GESTATIONAL SURROGACY

16 §2720. Enforceability of gestational surrogacy contract

17 A. In accordance with the requirements of this Part, a gestational surrogate,
18 her spouse if she is married, and the intended parents may enter into a written
19 contract, known as a gestational surrogacy contract.

20 B. A gestational surrogacy contract is enforceable only if approved by a
21 court in advance of in utero implantation, as provided in this Part.

22 Comment - 2013

23 Subsection B makes it clear that entering into a gestational surrogacy contract
24 is a significant legal act that must be approved by a court, just as an adoption of a
25 minor must be judicially approved. This Part provides for state involvement, through
26 judicial oversight, of the gestational surrogacy contract before, during, and after the
27 assisted reproduction process. The purpose of early involvement is to ensure that the
28 parties are appropriate for a gestational surrogacy contract, that they understand the
29 consequences of what they are undertaking, and that the best interests of a child born
30 of the gestational surrogacy contract are considered before the arrangement is
31 approved. Parties who enter into a gestational surrogacy contract not meeting the
32 requirements of this Part may not have their contract judicially approved; in such
33 cases, the law provides no rights or remedies governing their disputes.

34 §2720.1. Parties to a gestational surrogacy contract

35 A gestational surrogate shall, at the time the gestational surrogacy contract
36 is executed:

37 (1) Be at least twenty-five years of age.

38 (2) Have given birth to at least one child.

§2720.2. Contractual requirements

A. In an enforceable gestational surrogacy contract, the gestational surrogate shall:

(1) Agree to become pregnant by means of in utero implantation, using the gametes of the intended parents, and to give birth to the resulting child.

(2) Agree to submit to reasonable medical evaluation and treatment during the term of the pregnancy, to adhere to reasonable medical instructions about prenatal health, and to execute medical records releases under R.S. 40:1299.96 in favor of the intended parents.

(3) Certify that she has undergone at least two counseling sessions, separated by at least thirty days, with a licensed social worker, licensed psychologist, medical psychologist, licensed psychiatrist, or licensed counselor, to discuss the proposed surrogacy.

(4) Agree, along with her spouse if she is married, to relinquish all rights and duties as the parents of a child born as a result of in utero implantation.

B. In an enforceable gestational surrogacy contract, the intended parents
shall:

(1) Acknowledge that the gestational surrogate has sole authority with respect to medical decisionmaking during the term of the pregnancy consistent with the rights of a pregnant woman carrying her own biological child.

(2) Agree to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment of the child.

(3) Be recognized as the legal parents of the child.

C. The parties shall agree upon a preliminary estimate of reasonable expenses and their allocation in accordance with R.S. 9:2720.5.

Comments - 2013

(a) The gestational surrogacy contract regulated under this Part is a contract subject to the provisions governing Conventional Obligations or Contracts in Title IV, Book III of the Louisiana Civil Code.

(b) The contract must provide that the intended parents will be the parents of any child born pursuant to the contract while all others involved relinquish all parental rights and duties. In accordance with Paragraph A(4), the gestational surrogate is relieved of any legal responsibility for the child.

(c) Paragraph B(1) is not intended to modify current law regarding a pregnant woman's prenatal care. A pregnant gestational surrogate's medical rights are consistent with the rights of a pregnant woman carrying her own biological child.

(d) In requiring the parties to estimate expenses during the contracting process and to have this agreed-upon financial arrangement approved by the court, this Chapter mirrors the financial provisions of Louisiana adoption law. Mothers who relinquish their children for adoption in this state may not financially profit from the transaction, and are limited to recovery of actual and reasonable expenses. This and subsequent provisions of this Chapter subject contracts for gestational surrogacy to the same limitations on financial remuneration. See, e.g., Ch.C. Art. 1223.

(e) This Section speaks only to what must be provided for in the gestational surrogacy contract. There are additional requirements that must be met before a court may approve a gestational surrogacy agreement. See, e.g., R.S. 9:2720.1 (detailing requirements of eligibility for the gestational surrogate) and R.S. 9:2720.3 (setting out residence and other procedural requirements).

§2720.3. Proceeding to approve surrogacy contract

A. Prior to in utero implantation, the intended parents or the gestational surrogate and her husband, if she is married, may seek court approval of a gestational surrogacy contract by initiating a summary proceeding in either the court exercising jurisdiction over the adoption of minors in the parish of domicile of the intended parents or of the gestational surrogate.

B. A proceeding to approve a gestational surrogacy contract shall be maintained only if:

(1) The gestational surrogate and the intended parents have been domiciled in this state for at least one hundred eighty days at the time the summary proceeding is initiated.

(2) The intended parents, the gestational surrogate, and her spouse, if she is married, are all parties to the proceeding.

(3) A copy of the proposed gestational surrogacy contract is attached to the motion.

Comments - 2013

(a) A proceeding to approve a gestational surrogacy contract must be initiated in the court exercising jurisdiction over the adoption of minors because of

1 the similarity between these proceedings. Depending on the parish, the appropriate
2 court may include a family court, juvenile court, district court, or civil district court.

3 (b) To discourage forum shopping, Paragraph (B)(1) requires that the
4 proceeding be initiated in Louisiana if the intended parents and the gestational
5 surrogate have been residents for at least one hundred and eighty days.

6 §2720.4. Institution of records check

7 A. Upon the initiation of the summary proceeding, the court shall
8 immediately issue the following orders:

9 (1) That the local sheriff or the office of state police, Louisiana Bureau of
10 Criminal Identification and Information, conduct a records check for all federal
11 arrests and convictions and all state arrests and convictions for each of the intended
12 parents and the gestational surrogate and her spouse, if she is married.

13 (2) That the Department of Children and Family Services conduct a records
14 check for validated complaints of child abuse or neglect in this or any other state in
15 which either of the intended parents and the gestational surrogate and her spouse, if
16 she is married, has been domiciled since becoming a major.

17 (3) That the Judicial Administrator's Office of the Louisiana Supreme Court
18 conduct a records check for court orders entered into the Louisiana Protective Order
19 Registry involving each of the intended parents and the gestational surrogate and her
20 spouse, if she is married.

21 B. Each order shall state the full name, date of birth, social security number,
22 and former and current state of domicile since becoming a major of each subject of
23 the records check.

24 C. The sheriff or the office of state police, Louisiana Bureau of Criminal
25 Identification and Information, the Department of Children and Family Services, and
26 the Judicial Administrator's Office of the Louisiana Supreme Court shall accord
27 priority to these orders and shall provide a certificate to the court indicating all
28 information discovered, or that no information has been found.

29 §2720.5. Pre-Implantation Order

30 A. Within sixty days of the initiation of a proceeding to approve a gestational
31 surrogacy contract, the court shall set the matter for hearing, and after the hearing

1 may issue an order, known as the Pre-Implantation Order, approving the gestational
2 surrogacy contract and declaring that the intended parents shall be recognized as the
3 legal parents of a child born pursuant to the gestational surrogacy contract.

4 B. The court shall issue a Pre-Implantation Order upon finding that:

5 (1) The requirements of R.S. 9:2720 through 2720.4 have been satisfied and
6 the reports of criminal records, validated complaints of child abuse or neglect, and
7 Louisiana Protective Order Registry checks show that there is no risk of harm to the
8 child.

9 (2) Provisions have been made for all reasonable health care and legal
10 expenses associated with the gestational surrogacy contract until the birth of the
11 child, including responsibility for those expenses if the contract is terminated.

12 (3) The gestational surrogate will receive no compensation other than:

13 (a) Reasonable medical expenses, including hospital, testing, nursing,
14 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the
15 gestational surrogate for prenatal care and those medical and hospital expenses
16 incurred incidental to the birth.

17 (b) Reasonable expenses incurred for mental health counseling services
18 provided to the gestational surrogate prior to the birth and up to six months after
19 birth.

20 (c) Reasonable living expenses incurred by the gestational surrogate before
21 the birth of the child and for no more than sixty days after the birth during which, on
22 the written advice of a physician, the gestational surrogate is unable to work or
23 otherwise support herself for medical reasons due to complications associated with
24 the pregnancy or birth of the child.

25 (d) Reasonable travel costs related to the pregnancy and delivery, court costs,
26 and attorney fees incurred by the gestational surrogate.

27 (4) The parties understand the contract and give free consent.

28 Comments - 2013

29 (a) This pre-implantation authorization process for a gestational surrogacy
30 contract is roughly analogous to prevailing adoption procedures. Just as adoption

1 contemplates the transfer of parentage of a child from the birth parents to the
2 adoptive parents, a gestational surrogacy contract involves the transfer from the
3 gestational mother to the intended parents. This Chapter is designed to protect the
4 interests of the child to be born under the gestational surrogacy contract as well as
5 the interests of the gestational surrogate and the intended parents.

6 (b) This Section seeks to protect the interests of the child in several ways.
7 The major protection of the child is the authorization procedure itself. This Chapter
8 requires closely supervised gestational surrogacy arrangements to ensure the security
9 and well-being of the resulting child. Once a proceeding has been initiated,
10 Subsection A permits requires the court to approve a gestational surrogacy contract
11 only if the requirements of this Part are met. If it approves, the court must declare
12 that the intended parents will be the parents of any child born pursuant to, and during
13 the term of, the contract.

14 (c) The expense provisions of this Section largely track those applicable to
15 allowable expenses in connection with the adoption of minors, with some
16 modifications. See Ch.C. Art. 1223.

17 §2720.6. Multiple implantation attempts

18 If there are multiple attempts at in utero implantation, the gestational
19 surrogacy contract and the Pre-Implantation Order shall continue in full force and
20 effect in accordance with the parties' agreement until terminated pursuant to R.S.
21 9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational surrogacy
22 contract.

23 §2720.7. Confidentiality

24 A. All proceedings governed by this Chapter shall be heard by the judge in
25 chambers or in a closed hearing, and no one shall be admitted to the hearings except
26 the parties in interest, their attorneys, and officers of the court. The court, in its
27 discretion, may grant the request of a petitioner to permit others to be present at the
28 hearing.

29 B. The court records of these proceedings and the identities of the parties to
30 a gestational surrogacy contract shall be sealed and are subject to disclosure, release,
31 or inspection only upon application to the court and in conformity with the
32 applicable requirements of confidentiality applicable to adoptions in the Children's
33 Code.

34 §2720.8. Continuing and exclusive jurisdiction

35 Subject to the jurisdictional requirements of Uniform Child Custody
36 Jurisdiction and Enforcement Act, the court having jurisdiction over the proceeding

1 to approve a gestational surrogacy contract pursuant to this Part shall have exclusive,
2 continuing jurisdiction of all matters arising out of the gestational surrogacy contract.

3 Comment - 2013

4 This Section is designed to minimize the possibility of parallel litigation in
5 different states and the consequent risk of kidnapping for strategic purposes.

6 §2720.9. Termination of contract by notice

7 A. Before each in utero implantation, the gestational surrogate or either of
8 the intended parents may terminate the gestational surrogacy contract by filing a
9 motion with the court giving notice of termination and serving all other parties with
10 the motion. Upon filing of the motion, the court shall issue an order vacating the
11 Pre-Implantation Order.

12 B. Neither a gestational surrogate nor her spouse, if she is married, is liable
13 to the intended parents for terminating a gestational surrogacy contract pursuant to
14 this Section.

15 C. Absent timely notice of termination by an intended parent or the
16 gestational surrogate, no court shall terminate a gestational surrogacy contract after
17 issuance of a valid Pre-Implantation Order except for good cause shown after a
18 hearing. No court shall terminate a gestational surrogacy contract after a successful
19 in utero implantation.

20 Comments - 2013

21 (a) Subsection A permits a party to terminate a gestational surrogacy contract
22 after the Pre-Implantation Order by canceling the arrangement before in utero
23 implantation has occurred. This provides for cancellation during a time when the
24 interests of the parties would not be unduly prejudiced by termination. The intended
25 parents certainly have an expectation interest during this time, but the nature of this
26 interest is little different from that which they would have while they were
27 attempting to create a pregnancy through traditional means.

28 (b) It is certainly possible that if the gestational surrogate terminates the
29 gestational surrogacy contract after issuance of a Pre-Implantation Order, the
30 intended parents may have already expended substantial sums to undergo the
31 fertilization process. Fertilization costs may not be recovered from the gestational
32 surrogate, however, as any resulting embryos are genetically related to the intended
33 parents, and could be used by the intended parents in future attempts at assisted
34 reproduction.

35 (c) Once a human embryo exists, it is subject to the rules regulating human
36 embryos in R.S. 9:121-133.

1 (d) The use of the word "each" in Subsection A indicates that the possibility
2 of termination by notice remains before each implantation attempt, even if there are
3 multiple attempts.

4 (e) Good cause may include a finding of some change in circumstances that
5 would have prevented the court from issuing the Pre-Implantation Order. A change
6 in the results of criminal history, child abuse, or domestic violence registry checks
7 after issuance of the Pre-Implantation Order, for instance, may provide good cause
8 for termination.

9 §2720.10. Remedies

10 After in utero implantation, a failure to perform under the gestational
11 surrogacy contract does not give rise to the right to dissolution. The parties' rights
12 and responsibilities are otherwise governed by the rules of the Titles on Obligations
13 in General and Conventional Obligations or Contracts.

14 Comment - 2013

15 Before each in utero implantation, the gestational surrogate or either intended
16 parent may terminate the gestational surrogacy contract by giving the timely notice
17 provided for in R.S. 9:2720.9. After implantation, the remedy of contractual
18 dissolution would be inequitable. If the intended parents failed to pay the
19 agreed-upon expenses, for instance, allowing the gestational surrogate to take
20 advantage of extra-judicial dissolution procedures would not be an appropriate
21 remedy given the nature of the multiple and conflicting interests involved. The
22 damages, specific performance, and other provisions of the Title on Conventional
23 Obligations or Contracts, however, do apply to gestational surrogacy contracts.

24 §2720.11. Termination of contract and effects of divorce, nullity, or death

25 A. A judgment of divorce or judicial declaration of nullity of a marriage
26 between the intended parents, entered before in utero implantation, shall terminate
27 the gestational surrogacy contract. Upon the filing of a motion notifying the court
28 of the judgment of divorce or declaration of nullity, the court shall issue an order
29 vacating the Pre-Implantation Order.

30 B. If an intended parent dies before in utero implantation, the deceased
31 individual is not a parent of the resulting child unless the child was born within three
32 years of the death of the decedent and the deceased agreed in writing that if the in
33 utero implantation were to occur after death, the deceased individual would be a
34 parent of the child and that the child would have all rights, including the capacity to
35 inherit from the decedent.

Comments - 2013

(a) This Section provides an effect for divorce or declaration of nullity only before in utero implantation. A judgment of divorce or judicial declaration of nullity of a marriage between the intended parents, entered after in utero implantation, does not terminate the gestational surrogacy contract. Custody of the resulting child would be determined by reference to the child custody provisions of Louisiana Civil Code Book I, Title V, Chapter 2, Section 3. Likewise, if an intended parent dies after in utero implantation, the tutorship provisions of the Louisiana Civil Code, found in Book I, Title VIII, would apply to provide for rules governing the person and property of the resulting minor child.

(b) This Section tracks the policy and language of R.S. 9:391.1, which regulates children conceived after the death of a parent using the decedent's gametes.

§2720.12. Effect of subsequent marriage

After the issuance of a Pre-Implantation Order, subsequent marriage of the gestational surrogate does not affect the validity of a gestational surrogacy contract. The consent of the spouse is not required, and he is not a presumed father of the resulting child, notwithstanding any legal presumption to the contrary.

Comment - 2013

If, after the original court order approves the gestational surrogacy contract, the gestational surrogate marries, the contract continues to be valid and the consent of her new spouse is not required. The new spouse is not a party to the original action and should not be the presumed legal father of the resulting child. Under this Part, the intended parents are the child's legal parents. The spouse of the gestational surrogate will not hold the status of a legal parent unless he is the genetic father or adopts the child.

§2720.13. Post-Birth Order

A. Upon birth of a child to a gestational surrogate within three hundred days after in utero implantation, the intended parents or their successors, the gestational surrogate, or her spouse shall file a motion requesting issuance of a Post-Birth Order. The motion shall be accompanied by a certified copy of the child's original birth certificate and an affidavit executed by the intended parents containing an accounting of fees and charges paid or agreed to be paid by or on behalf of the intended parents in connection with the gestational surrogacy contract.

B. If neither the intended parents, their successors, the gestational surrogate, or her spouse file the motion described in Subsection A, the Department of Children and Family Services may file a motion notifying the court that a child has been born

to the gestational surrogate within three hundred days after in utero implantation and
the court shall set the motion for hearing.

C. The court may order a hearing and, after finding that the parties have complied with this Part, shall issue a Post-Birth Order:

(1) Confirming that the intended parents are the legal parents of the child and are financially responsible for the child;

(2) If necessary, ordering that the child be surrendered to the intended
parents; and

(3) Directing that a new birth certificate be created and that the intended parents be listed on the birth certificate as the parents of the child pursuant to R.S. 40:32 et seq., and that the original birth certificate be sealed and subject to release or inspection only upon application to the court for good cause shown.

§2720.14. DNA testing

A. If the child is alleged not to be the child of the intended parents, supported by a sworn affidavit alleging specific facts which either tend to prove or deny filiation, the court shall order genetic testing to determine the parentage of the child. If the court finds after a contradictory hearing that the child is the genetic child of the surrogate, the court shall issue an order recognizing her as a legal parent of the child.

B. If any party refuses to submit to such tests, the court may resolve the question of filiation against such party or enforce its order if the rights of others and the interests of justice so require.

Comments - 2013

(a) Such an allegation may be raised in a number of different proceedings, including a filiation, disavowal, or contestation action. See, e.g., C.C. Arts. 187, 191, 197, 198. The prescriptive or peremptive period applicable to such an action will be determined by the applicable Civil Code Article for the particular form of action instituted.

(b) DNA testing for paternity determinations is authorized and regulated by R.S. 9:396.

§2720.15. Finality; time limitations

A. A party to the gestational surrogacy contract may bring an action to annul a Post-Birth Order; however, except as otherwise provided in this Part, no action to annul a Post-Birth Order may be brought except on the grounds of fraud or duress.

B. An action to annul a Post-Birth Order based upon a claim of fraud or duress shall be brought:

(1) Within one year from the date of the signing of the final decree or mailing of the notice of the judgment when required if the fraud or duress is perpetrated by anyone other than the intended parents.

(2) Within two years from the date of the signing of the final decree or mailing of the notice of the judgment when required if the fraud or duress is perpetrated by an intended parent.

Comment - 2013

The narrow grounds and relatively short window for nullifying a Post-Birth Order here are drawn, with some modifications, from Louisiana's grounds for annulling a final decree of adoption. There, as here, the parties' arrangement has been subject to substantial judicial scrutiny, and all parties involved have a special need for finality.

Section 2. R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j) are hereby amended and reenacted to read as follows:

§34. Vital records forms

* * *

B. The forms shall be printed and supplied or provided by electronic means by the state registrar and the required contents are:

(1) Contents of birth certificate. The certificate of birth shall contain, as a minimum, the following items:

(a) Full name of child.

* * *

(viii) In the case of a child born of a surrogate birth parent who is related by blood or affinity to a biological parent as a result of an enforceable gestational

1 surrogacy contract, as defined in R.S. 9:2720, the surname of the child's biological
2 parents shall be the surname of the child.

3 * * *

4 (h)

5 * *

(v) In the case of a child born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent~~ as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720, the full name of the biological parent ~~who is proven to be the father by DNA testing~~ father shall be listed as the father.

(i) Maiden name of mother; however, if the child was born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent~~ as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720, the maiden name of the biological parent ~~who is proven to be the mother by DNA testing~~ mother shall be listed as the mother and the name of the surrogate birth parent is not required.

(j) In the case of a child born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent~~ as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720, the biological parents ~~proven to be the mother and father by DNA testing~~ shall be considered the parents of the child.

20 * * *

21 Section 3. R.S. 9:2713 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Badon

HB No. 433

Abstract: Prohibits genetic surrogacy contracts and provides for the enforceability of gestational surrogacy contracts.

Proposed law (R.S. 9:2718) defines the following terms: "gamete", "genetic surrogacy", "gestational surrogacy", "gestational surrogate", "in utero implantation", and "intended parents".

Proposed law (R.S. 9:2719) provides that a contract for genetic surrogacy shall be absolutely null.

Proposed law (R.S. 9:2720) provides that a gestational surrogacy contract is only enforceable if approved by a court before in utero implantation.

Proposed law (R.S. 9:2720.1) requires a gestational surrogate to be at least 25 years of age and to have already given birth to at least one child at the time the gestational surrogacy contract is executed.

Proposed law (R.S. 9:2720.2) requires the gestational surrogate to do the following in a gestational surrogacy contract:

- (1) Agree to become pregnant by in utero implantation, using the gametes of the intended parents, and give birth to the resulting child.
- (2) Agree to submit to reasonable medical testing and instructions regarding prenatal health and to execute a medical records release in favor of the intended parents.
- (3) Certify that she has attended at least two counseling sessions, separated by at least 30 days, with a mental health professional.
- (4) Agree to relinquish all rights of the child born as a result of the in utero implantation. If the surrogate is married, her spouse must also relinquish all rights.

Proposed law further requires the intended parents to do the following in a gestational surrogacy contract:

- (1) Acknowledge that the gestational surrogate has sole authority with respect to medical decisionmaking during the pregnancy.
- (2) Agree to accept custody and full parental rights of the child, regardless of any impairment of the child.
- (3) Be recognized as the legal parents of the child.

Proposed law requires the parties to agree on a preliminary estimate of reasonable expenses.

Proposed law (R.S. 9:2720.3) allows the parties to the gestational surrogacy contract to seek court approval of a gestational surrogacy contract before in utero implantation by initiating a summary proceeding in the court exercising jurisdiction over adoptions where the intended parents or gestational surrogate reside.

Proposed law (R.S. 9:2720.4) requires the court to order background checks on each of the intended parents, the gestational surrogate, and her spouse, if married, from the following entities:

- (1) The local sheriff or the office of the state police, Louisiana Bureau of Criminal Identification and Information.
- (2) The Department of Children and Family Services.
- (3) The Judicial Administrator's Office of the Louisiana Supreme Court.

Proposed law (R.S. 9:2720.5) requires the court to set a hearing within 60 days of the initiation of a proceeding to approve a gestational surrogacy contract and requires the court to issue a Pre-Implantation Order approving the gestational surrogacy contract upon finding the following:

- (1) All requirements of proposed law regarding gestational surrogacy contracts have been satisfied and that the background checks show there is no risk of harm to the child.
- (2) Provisions have been made for all reasonable health care and legal expenses associated with the gestational surrogacy contract.
- (3) The gestational surrogate will only be compensated for reasonable medical expenses, mental health counseling expenses, reasonable living expenses during the pregnancy and not to exceed two months after the birth of the child, and reasonable travel costs.
- (4) The parties understand the contract and give free consent.

Proposed law (R.S. 9:2720.6) provides that the gestational surrogacy contract and the Pre-Implantation Order shall remain in full force and effect in accordance with the parties agreement or until a live birth occurs when there are multiple attempts at in utero implantation.

Proposed law (R.S. 9:2720.7) requires all proceedings and court records relative to the gestational surrogacy contract be held and maintained confidentially.

Proposed law (R.S. 9:2720.8) provides for the continuing and exclusive jurisdiction of the court approving a gestational surrogacy contract for matters relative to a gestational surrogacy contract.

Proposed law (R.S. 9:2720.9) allows the intended parents or the gestational surrogate to terminate a gestational surrogacy contract before in utero implantation by filing notice of termination with the court and serving all parties. Further provides that neither a gestational surrogate, nor her spouse, is liable to the intended parents for terminating a gestational surrogacy contract. Also prohibits the court from terminating a gestational surrogacy contract after issuing a valid Pre-Implantation order, except for good cause, or after a successful in utero implantation.

Proposed law (R.S. 9:2720.10) provides for remedies for the failure to perform under a gestational surrogacy contract.

Proposed law (R.S. 9:2720.11) requires the court to issue an order vacating the Pre-Implantation order when a judgment of divorce or judicial declaration of nullity of a marriage between the intended parents is entered before in utero implantation. Further provides that an intended parent who dies before in utero implantation is considered a parent of a resulting child only when the child is born within three years of the death of the intended parent and the deceased agreed in writing that the deceased would be a parent of the child if the in utero implantation occurred after death.

Proposed law (R.S. 9:2720.12) provides that the subsequent marriage of the gestational surrogate has no effect on the validity of a gestational surrogacy contract.

Proposed law (R.S. 9:2720.13) requires the intended parents or the gestational surrogate to file a motion requesting issuance of a Post-Birth Order upon birth of a child within 300 days of in utero implantation. Authorizes DCFS to file the motion if the parties fail to do so.

Proposed law requires the court to issue a Post-Birth Order, after finding the parties have complied with the requirements of proposed law, which shall contain the following:

- (1) Confirmation that the intended parents are the legal parents.
- (2) An order that the child be surrendered to the intended parents.

- (3) An order for the creation of a new birth certificate listing the intended parents as the parents of the child and for the original birth certificate to be sealed.

Proposed law (R.S. 9:2720.14) provides for DNA testing when the child is alleged not to be the child of the intended parents.

Proposed law (R.S. 9:2720.15) restricts basis of annulment of a Post-Birth Order to allegations of fraud and duress. Requires an action to annul be brought within one year from the date of the signing of the final decree or mailing of the notice of judgment when it is alleged that someone other than the intended parents perpetrated the fraud or duress, or two years from the date of signing if an intended parent is alleged to have perpetrated the fraud or duress.

Present law provides for the surname of the child, the name of the father, and the name of the mother when a child is born of a surrogate birth parent. Further limits a surrogate birth parent to one who "is related by blood or affinity to a biological parent".

Proposed law retains present law except that it eliminates the provision limiting a surrogate birth parent to one who "is related by blood or affinity to a biological parent" and makes changes consistent with proposed law.

Present law prohibits a "contract for surrogate motherhood" defined as any agreement whereby a person not married to the contributor of the sperm agrees for valuable consideration to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the contributor of the sperm the custody and all rights and obligations to the child.

Proposed law repeals present law.

(Amends R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j); Adds R.S. 9:2718-2720.15; Repeals R.S. 9:2713)